engineer recorded the call on a VoIP server.[22] He later e-mailed it to me. I am incorporating this call, in full, as part of my testimony. It is about 50 minutes long. I implore any policy person to listen to this call in full as it is very important, especially as it relates to how AT&T deals with competitors and to the issues related to SS-7 Interconnection.

(PLEASE TAKE A MOMENT AND LISTEN TO THE CALL – its works with QuickTime)

The engineers wanted to move forward. The "Regulatory People" would not commit to anything other than to "allow" UTEX to purchase a service.

UTEX DOES NOT WANT TO PURCHASE ANY SERVICE FROM AT&T.

WE ARE A PEER.

We want to compete against them for the origination and termination of new technology service. We are being denied our rights with respect to peered interconnection for the mutual exchange of traffic. This has heightened public policy concerns when this denial relates to the deployment of new technology.

What perhaps is most amazing to me is that AT&T admits that it has never connected as a peer to any competitor. Eleven years after the act, the single most seminal "RIGHT" (*e.g.*, the right to be treated as a peer) bestowed on CLECs under the Act has never once been implemented.

[22] I recall that his reason was to have a recording of technical terms that might be used and discussed for possible interconnection.

UTEX believes our affirmative case with respect to all SS-7 issues is specifically about this right and ability to interconnect with AT&T as a peer and then exchange traffic under symmetrical and reciprocal terms. That is the entire premise of the interconnection portions of the act.

Q: WHAT ARE THE RELEVANT ICA TERMS ON THESE ISSUES?

A: GTC §§ 3.1, 7.3.1.1, 8.1, 9.1.1, 9.3.1, 9.4.1-9.4.3, 30.2, 32.6, 34.1, 34.2, 36.1, 50.1, 50.2, 53.5, 53.6, 53.7, 53.9, 53.11, 57.1, 58.1, 61.1; Attachment 6 UNE §§ 2.11, 2.17.3, 9.1.1 - 9.1.7, 9.2.3.1, 9.3.2.4; Attachment 9 Billing Other §§ 3.1, 3.2, 8.1, 11.1-11.9, 12.3; Attachment 11 Network Interconnection Architecture §§ 1.1, 1.3, 2.0 - 4.0; Attachment 11 Appendix IT §§ 1.1, 1.4, 2.1 - 2.2; Attachment 11 Appendix SS7 § 1.1; Attachment 12 Compensation - (All); Attachment 14 Interim Number Portability §§ 1.1, 2; Attachment 16 Network Security § 2.1; Attachment 17 §§ 1.1.4.2, 1.1.4.3, 1.1.4.4.8, 1.1.4.4.33, 2.1 - 3.1, 4.1, 6.2, 6.3, 6.4, 9.4.1 - 9.4.10, 9.6.2; and Attachment 25 ISDN Interconnection (All). I refer to the most important and relevant of these.

Attachment 11 SS7 Interconnection provides:

> 1.1 For the purposes of signaling for the exchange of traffic under this Agreement between the Parties' networks, the Parties will connect their signaling networks in accordance with the technical terms of Section 9 of Attachment 6: Unbundled Network Elements.

We then turn to Section 9 of Attachment 6. In this case §§ 9.1.1-9.2.1.1.2, 9.2.3.1 and 9.2.3.4 apply. UTEX is not seeking to obtain SS7 functionality as a UNE or a service. We merely look at these sections for their "technical value." We want to interconnect to AT&T's signaling network as a network peer. These contract provisions discuss the cost of each party's transport to the STEP and then the cost of each party's STEP port. Once connected, there are no usage

charges, and the parties then mutually deliver telephone exchange and/or exchange access traffic with call control provided via SS7 using B-Links.

Q: IS UTEX ASSERTING A RIGHT TO OBTAIN SS7 SIGNALING AS A UNE?

A: No. This is interconnection, not UNE. UTEX is not requesting relief under § 251(c)(3), but instead asserts that these terms relate to and implement § 251(c)(2) and 51.75 of the FCC's rules. UTEX is not using AT&T' former switch port UNE or tandem switching UNE, under either § 251(c)(3) or a commercial arrangement. The purpose is to have call control for traffic processed by UTEX's own network and switching fabric that is addressed to or received from AT&T network and switching fabric.

47 I.E. § 51.305 provides, in pertinent part:

> Sec. 51.305 Interconnection.
> (a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent Leek's network:
> (1) For the transmission and routing of telephone exchange traffic, exchange access traffic, or both;
> (2) At any technically feasible point within the incumbent Leek's network including, at a minimum:
> ...
> (v) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and...
> (3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent Leek's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier; and
> (4) On terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions upon which the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

This rule requires AT&T to interconnect its signaling system with UTEX's signaling on a direct basis if, as is the case here, UTEX requests direct interconnection. The rule does not allow AT&T to require UTEX to subscribe to AT&T' access tariff and "buy signaling as a "service." The rule also does not contemplate that signaling interconnection is available only as a UNE and then only for so long as signaling is also on the FCC's list of UNEs that must be made available. Even where signaling is not available as a UNE, AT&T must interconnect its signaling network with UTEX's signaling network so the parties can set up and tear down calls. Attachment 11 SS7 implements the rule.

Q: DOES THE COMMISSION HAVE A RULE ADDRESSING DIRECT INTERCONNECTION OF SIGNALING NETWORKS?

A: Yes. See PUC Subst. R. 26.272(d).[23] This rule has a similar result as the FCC's rule.

Q: WHY DOES ATTACHMENT 11 SS7 REFER TO THE UNE APPENDIX IF S7 SIGNALING IS NOT A UNE?

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[23] [26.272](d) **Principles of interconnection.**

(2) Technical interconnection principles. Interconnecting CTUs shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and are in compliance with §23.61 of this title (relating to Telephone Utilities) and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.

...

(B) Interconnecting CTUs shall provide each other non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.

(C) Interconnecting CTUs shall provide each other Common Channel Signaling System Seven (SS7) connectivity where technically available.

A: Attachment 11 SS7 implements the rule. Again, this is interconnection. It then refers to the UNE section for technical guidance. As the call in my testimony shows, there are no technical problems whatsoever.

Also discussed on the call are the issues of what are the costs after interconnection. I clearly explain that we will have to work that out, but as long as the costs are symmetrically applied we will be quite willing to negotiate.

Since the same cost standard applies for interconnection (*e.g.*, TELIC) as for UNEs and since other general principles apply to both UNEs and interconnection (*e.g.* nondiscrimination) it would make sense to have the same cost based "rates" apply within a reciprocal compensation scheme for each party's use of the other party's SS7 databases.

Q: HAS AT&T REFUSED TO DIRECTLY INTERCONNECT ITS SS7 NETWORK WITH UTEX'S SS7 NETWORK PURSUANT TO ATTACHMENT 11 SS7?

A: Yes. After our call, they indicated that if we wanted direct interconnection we had to buy SS7 "service" out of their tariff.

Q: DOES ATTACHMENT 11 AND/OR ATTACHMENT 6 SECTION 9 MENTION ANY REQUIREMENT TO SUBSCRIBE TO A TARIFFED OFFERING?

A: No. There are specific terms. In addition, GTC § 30.2[24] provides that AT&T cannot override ICA terms by filing or using a tariff.

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[24] 30.2 SWBT will not, of its own volition, file a tariff or make another similar filing which supersedes this Agreement in whole or in part. SWBT will make no filings which are inconsistent with this commitment. This Section is not intended to apply to any SWBT tariffs or filings which do not affect CLEC's rights or SWBT's obligations to CLEC under this Agreement. This Section does not impair SWBT's right to file tariffs nor does it impair SWBT's right to file tariffs proposing new products and services and changes in the prices, terms and conditions of existing products and services, including discontinuance or grandfathering of existing features or services, of any telecommunications

Q: HOW DOES UTEX CURRENTLY SIGNAL WITH AT&T?

A: We use a third party provider (Revising). This provider is directly connected with AT&T's signaling network. Revising is not CLEC, so it has no §§ 251/252 rights. It therefore purchases service from AT&T. UTEX, however, is a CLEC that wants to self-supply its signaling and we are ready to do so. One reason is that for our applications we can only use Revising to signal to the AT&T tandems and thus technically can not "signal" to end offices without incurring significant additional cost. This diminishes the quality of our interconnection.

A much more important reason, as described in greater detail in the technical testimony of Mr. Teller, is that UTEX has solved the so called "Phantom Traffic" problem. We have not only solved the problem through invention, but because of our invention we can also solve the problem through standard industry convention. However that solution will require AT&T to signal with us as a peer and load our "Non-geographical" numbers[25] and route calls addressed to those number to our network. This could have incredibly positive inter-working network effects on the whole industry, and indeed the whole economy.

Version, because it is not a carrier like UTEX, and does not have carrier rights like UTEX can not compel AT&T to negotiate or to resolve the fact that AT&T has refused to make this important service work.

Q: DOES RESORTING TO A THIRD PARTY PROVIDER COST UTEX ADDITIONAL MONEY, OR MORE MONEY THAT IT WOULD COST TO HAVE ITS OWN SIGNALING NETWORK AND OBTAIN DIRECT INTERCONNECTION?

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services that SWBT provides or hereafter provides to CLEC under this Agreement pursuant to the provision of Attachment 1: Resale, nor does it impair CLEC's right to contest such tariffs before the appropriate Commission.

[25] NANPA, after consulting with the FCC and reviewing our specific proposals granted us these 500 numbers for this purpose.

A: Yes, one added benefit of direct Signaling Interconnection is that we will save money. We could operate our own SS7 for much lower cost. This is particularly so when it comes to expanding to additional areas or if we desire to establish direct end office trunks.

Q: HAS AT&T OFFERED TO INTERCONNECT AT THE SIGNALING LAYER ON "TERMS AND CONDITIONS THAT ARE NO LESS FAVORABLE THAN THE TERMS AND CONDITIONS UPON WHICH THE INCUMBENT LEC PROVIDES SUCH INTERCONNECTION TO ITSELF?"

A: No. AT&T does not require itself to adhere to the terms and prices of its access tariff. The conditions AT&T is trying to impose are much less favorable than those it affords to itself.

Q: HAS AT&T SAID THAT IT WOULD PAY UTEX FOR AT&T' USE OF UTEX's STEPS IN THE SAME WAY IT IS REQUIRING UTEX TO PAY FOR AT&T STEPS?

A: No. This issue is similar to other issues in this case. AT&T appears to believe that it is always entitled to payment – at access prices – but is never required to pay anything to the CLEC. Again this violates the seminal right to be treated as a peer under the Act. **Section 3b**

10 If answer to AT&T DPL No. 4 above is "Yes," does the ICA prohibit UTEX from charging AT&T for translating messages to a protocol other than SS7?

89 Should the Commission declare that the ICA does not control the issue of whether UTEX may bill AT&T for Signaling Layer Translation Service?

91 Should the Commission declare that AT&T is responsible for payment of future invoices for so long as it receives Signaling Layer Translation Service?

Q: WHAT IF YOU ARE WRONG ABOUT YOUR RIGHTS? WHAT IF THIS COMMISSION SAYS "NO" AT&T DOES NOT HAVE TO SIGNAL DIRECTLY WITH YOU?

A: In Early 2006 I thought about this. I obviously think AT&T is wrong, and I wondered what type of incentive I could create to get AT&T to the table. It dawned on me that if they can

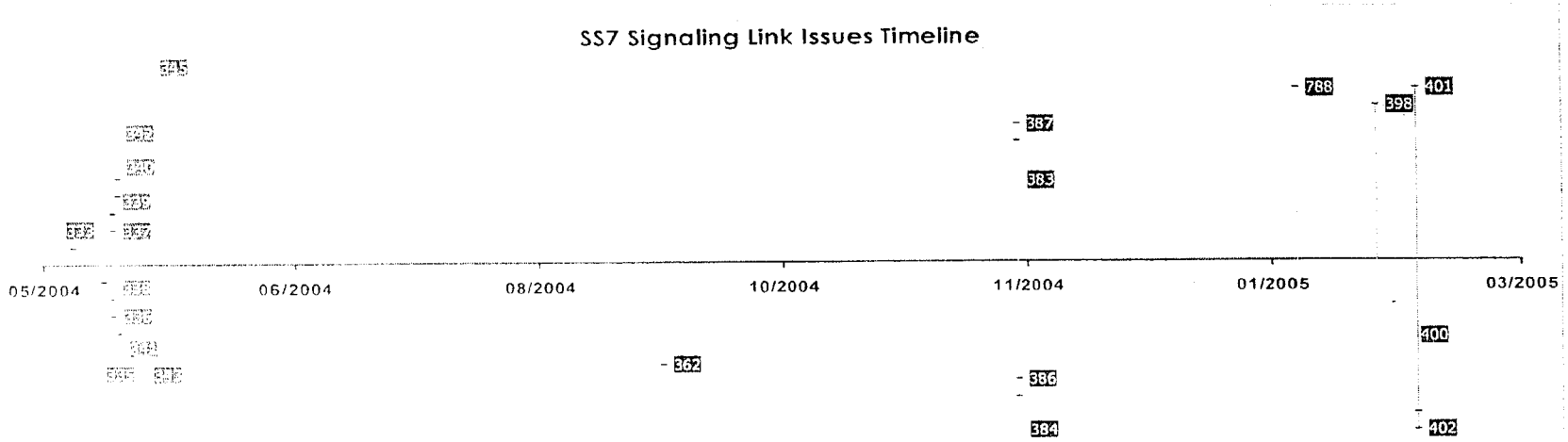
compel me to buy their products against my wishes, then I could use the same approach – force them to buy from us. UTEX then filed its current Signaling Layer Translation Service Tariff. This tariff says that if a carrier (including Lies) does not connect to UTEX at the IP Layer and if there is no other contractual arrangement then to the extent UTEX must convert IP-based traffic to SS7-based traffic and pay to get to the carrier to exchange traffic then the carrier must compensate UTEX for the associated cost.

UTEX has invented superior technology but this technology is IP-based, since the goal is to entice IP Enabled communications providers to utilize our networks. When they do, all of society benefits in that there are more users who can communicate with each other.[26]

Even AT&T benefits because its service is more valuable given that it is accessible to more users, across the world. When AT&T refuses to signal with me on a peered, symmetrical and reciprocal basis, I recover a tariffed per call charge from AT&T as compensation for making communication possible between their customer base and mine. While I believe this approach is counter to the intent of the Act, it is the logical "other side of the same coin" minted by AT&T' regime. If they can force interconnecting carriers to be customers, so can UTEX.

Below is the Pictorial Timeline for Section Three of my Testimony. The numbers refer to the exhibit numbers in our exhibit book. If it has a D it was an item produced by UTEX in Discovery. If it has a PA it is a document or communications which is publicly available.

[26] See Metcalf's Law and the Network Effects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08/2004
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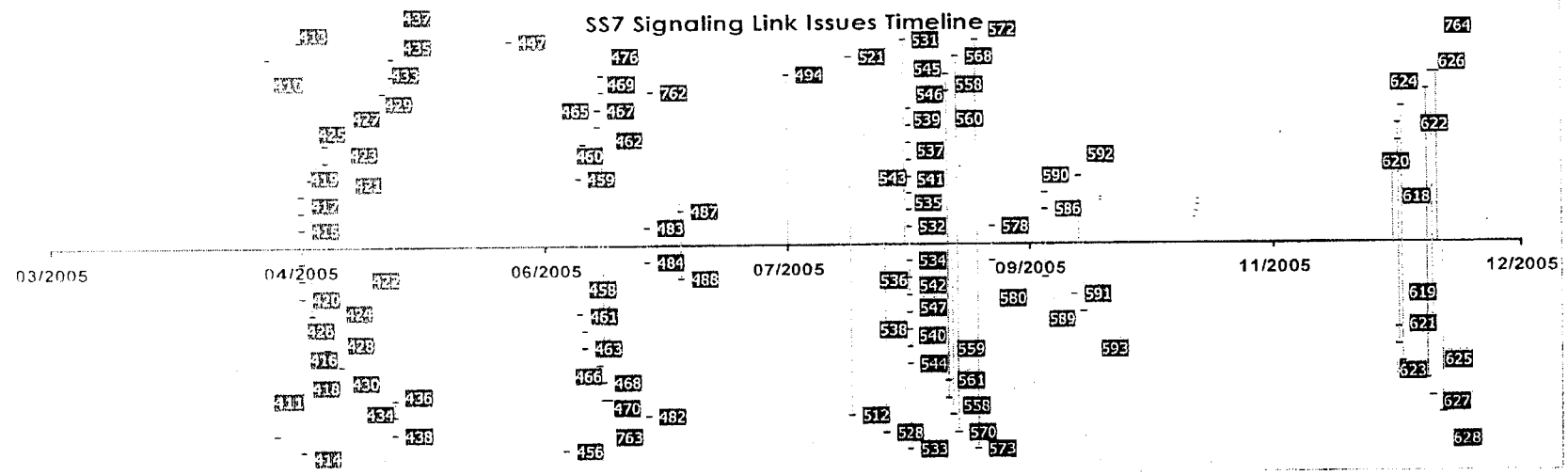
11/2004
01/2005
03/2005


SS7 Signaling Link Issues Timeline
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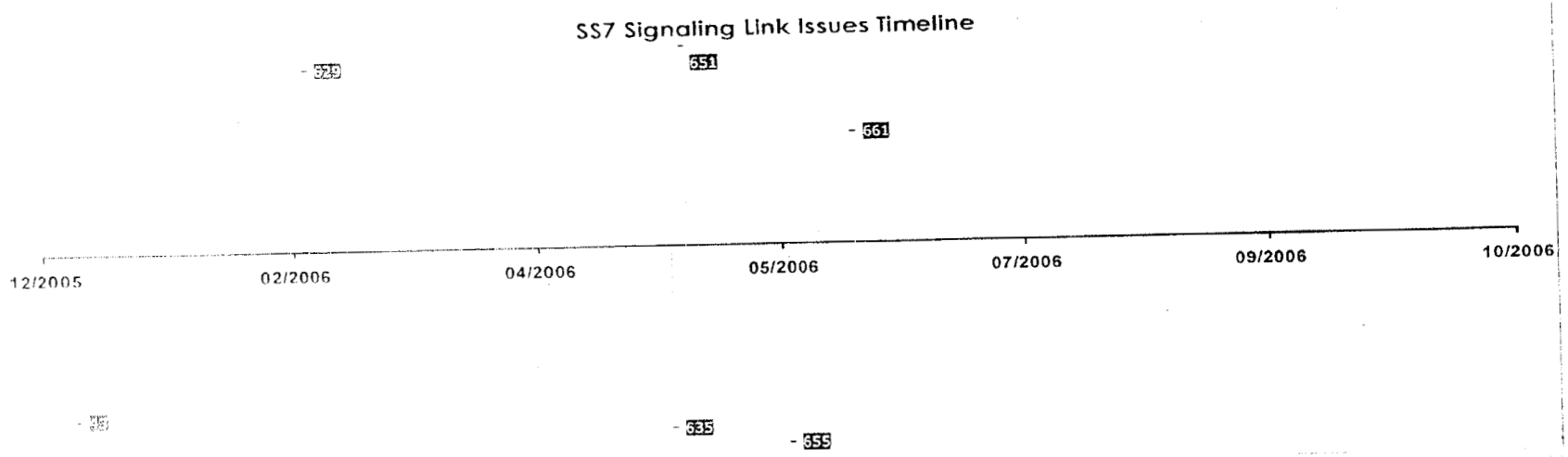
SS7 Signaling Link Issues Timeline
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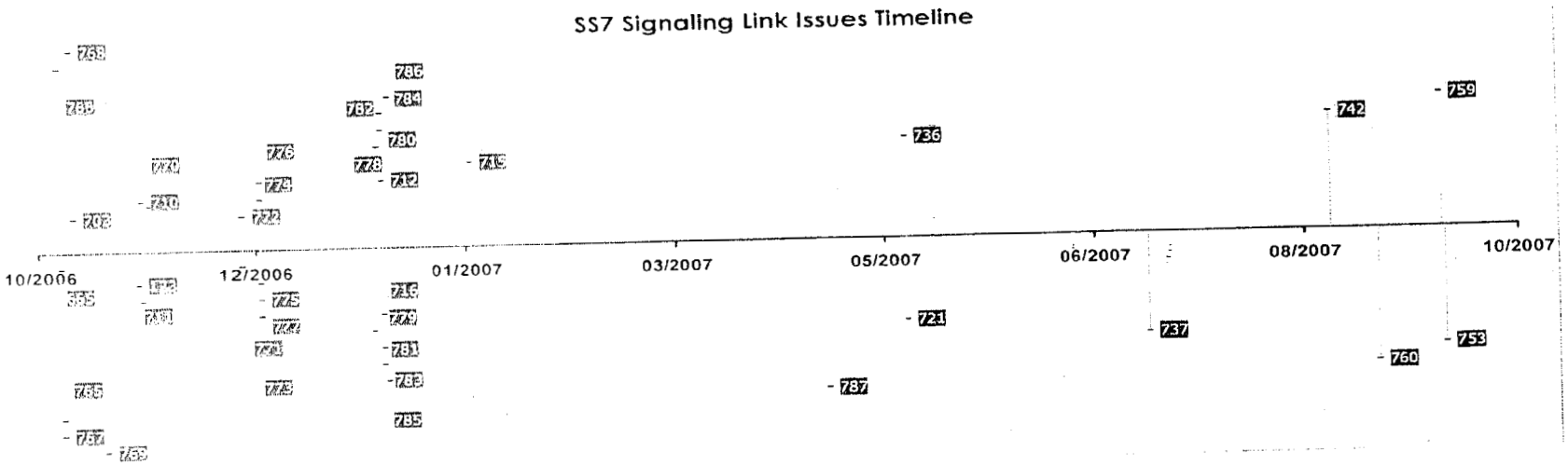
12/2005
02/2006
04/2006
05/2006
07/2006
09/2006
10/2006
635
655


SS7 Signaling Link Issues Timeline
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06/2007
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10/2007

TESTIMONY SECTION 4

1 **Should AT&T be ordered to process UTEX's ISDN Interconnection orders and implement the decision in Docket 29944?**

2 **Did UTEX meet its obligations, as spelled out in the Docket No. 29944 Arbitration Award, for obtaining ISDN Interconnection?**

3 **If not, were such obligations a condition precedent to AT&T's obligation to provide ISDN Interconnection?**

4 **Did AT&T fail or refuse to provide UTEX with ISDN Interconnection under the parties' ICA?**

Q: HAS UTEX "MODIFIED ITS NETWORK ELEMENTS TO PERFORM AS A CLASS 5 SWITCH?"

A: Yes. "A Class 5 switch, in United States telephony jargon refers to a telephone switch or exchange located at the local telephone company's central office, directly serving subscribers. Class 5 switch services include basic dial-tone, calling features, and additional digital and data services to subscribers using the local loop." UTEX's switching fabric has all the functionalities and affords all the capabilities of traditional end office switches that serve end users, plus a whole lot more.

ISDN interconnection really has little if anything to do with the functionalities that are available to end users, other than the ability to make and receive phone calls that must traverse multiple networks. "Interconnection is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic." 47 I.E. § 51.5. We are discussing the physical interface between AT&T and UTEX and the signaling protocol between the two networks. Nonetheless, yes, all of UTEX's network elements[27] can operate like a Class 5 switch. We can and do serve end users.

[27] Section 153(29) defines "network element": "Network element.--The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such

Q: HAS UTEX MODIFIED ITS NETWORK ELEMENTS TO PROVIDE SIGNALING?

A: Yes. We are prepared to signal with AT&T using Q.931, just like the ICA says.

Q: HAS UTEX MODIFIED ITS NETWORK ELEMENTS TO PROVIDE BILLING?

A: Yes. We have the ability to issue bills.

Q: HAS UTEX MODIFIED ITS NETWORK ELEMENTS TO PROVIDE ERROR TREATMENT?

A: Yes.

Q: DOES YOUR ERROR TREATMENT GENERALLY FOLLOW GENERALLY ACCEPTED PRACTICES AND POLICIES OF THE PSTN?

A: Yes. Error treatment will generally follow generally accepted practices and policies of the PSTN.

Q: HAS UTEX "ENSURE[D] THAT ITS CLASS 5 SWITCH OR EQUIVALENT SHALL ALSO PERFORM, INCLUDING BUT NOT LIMITED TO, THE FOLLOWING FUNCTIONS: (1) DIAL TONE TO END USERS VIA LINE/LOOP CONNECTIONS CONTAINING CUSTOMER ASSIGNABLE NPA/NXXS (TELEPHONE NUMBERS), (2) CONNECTS TO OTHER CLASS 5 END OFFICE SWITCHES AND TANDEM SWITCHES VIA VOICE GRADE TRUNKING CONNECTIONS, (3) PROVIDES PROTOCOL INTER-WORKING, AND (4) MEETS FEDERAL REQUIREMENTS FOR LNP?"

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facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." All carriers have network elements. This is not a term that applies only to ILECs.

A: We can do each of these things. We in fact do each of these things.

Q: DOES UTEX NEED SBC NUMBERS FOR ISDN INTERCONNECTION?

A: No. We can supply any numbers that are needed.

Q: WILL UTEX HAVE ITS OWN LRN IN EACH LATA WHERE IT REQUESTS ISDN INTERCONNECTION AND BE FULLY LNP COMPLIANT?

A: Yes.

Q: DOES UTEX ADHERE TO THE GUIDELINES AS SET FORTH IN 47 C.F.R. § 52.26 AND THE WORKING GROUP REPORT?

A: Yes. We meet each of those requirements. We fully support both porting in and porting out, and we can do so for all customers served using ISDN interconnection.

Q: CAN AT&T IN GOOD FAITH CLAIM THAT THEY HAVE WORKED WITH UTEX TO ESTABLISH ISDN INTERCONNECTION?

A: Absolutely not. In fact over a period of years UTEX has tried every means possible to actually get AT&T to work with us to establish ISDN Interconnection. We have created the forms, showed it is superior to other methods such as "MF." We have been ready now for years.

Over time, the AT&T folks have been so well trained by their institution that if anyone at UTEX even mutters "ISDN" the conversation comes to a halt and we are told that their attorneys have prohibited communication on any ISDN related issue. The theory is that we will always be in litigation over the issue so we are not allowed to make progress.

Q: DID ISDN INTERCONNECTION BECOME MORE IMPORTANT IN THE WAKE OF AT&T'S ATTACK ON VOIP PROVIDERS IN LATE 2003 UNTIL NOW?

A: Yes. Very much so. One unique element of ISDN Interconnection is the compensation section related to ISDN Interconnection. It works different than normal reciprocal

compensation. Basically, in the original arbitration SBC complained that WCC requested method of interconnection required SBC to do more than its "fair share" of work – in that if SBC was being forced to be the network side of a "network to user protocol" type of interconnection. In response, WCC offered to pay for SBC's side of the interconnection – guaranteed – whether it was used or not. Thus a unique type of compensation arrangement was formed. ISDN voluntarily paid for the SBC side of the interconnection.[28] One intended result was that the compensation section with respect to jointly provided access to IXC's would be that WCC would get to keep 100% of the jointly provided access. This heavily arbitrated and unique term is clear. It also effectively takes the SOUP with respect to VoIP off the Stove.

AT&T's legal theories related to VOIP on a forward looking basis are that all this "VoIP Traffic" to and from ESPs is really some sort of IXC access. If you assume ISDN Interconnection is up and running, this would not matter because even if it was IXC traffic, UTEX would keep 100% of the alleged charges and would pay AT&T a flat rate as prescribed by the ICA. In September of 2004 I explained in detail to SBC multiple times my desire to do ISDN interconnection as a way to avoid all future disputes. As we found out by their e-mails we obtained in discovery, this only hardened their resolve to never let ISDN Interconnection work.

Q: IF YOU ARE COMPLIANT WITH DOCKET 29944 ABOVE WHY HASN'T AT&T INTERCONNECTED?

A: They are acting anti-competitively and breaching the contract. AT&T has refused each and every attempt we have made to order, provision and use ISDN for interconnection.

Q: PLEASE EXPLAIN THAT.

[28] The rate would be about $200 per month per ISDN PRI assuming normal usage.

A: After the Docket 29944 Award we tried to start the process of implementation. We submitted orders specifying the end offices we wished to start with and we focused on markets outside the major cities of Dallas, Houston and San Antonio. (ISDN Interconnection still is the best hope for competition in smaller markets.) We provided quantities and other information. There was, for a while, some visible progress. Then all progress came to a screeching halt. Only now do we know what was going on inside AT&T.

Q: WHAT WAS GOING ON INSIDE AT&T?

A: The lower level personnel apparently assumed – as we did – that AT&T would comply. But after considerable internal discussion the higher level management decided to refuse to implement by taking a strictly legal position. First they would insist on a demonstration that UTEX it could do the things prescribed by the Docket 29944. They would then insist it was not enough proof. They would assert we could not do what we were supposed to do. They would not do a test. They would not create or process forms. They would just say no. When we pushed the matter, they would then claim the matter was in "litigation" and all engineering and non-legal communication would cease and only the lawyers would talk. Forever. Regardless of what we said or did. The pictorial timeline below comprises a collection of the internal communications produced by AT&T in discovery along with other documents, such as our ISDN orders and forecasts. Their tactics are obvious. And bad faith.

Q: WHAT DID YOU DO?

A: We of course invoked informal dispute resolution since it is a prerequisite to any complaint. That fed into the AT&T plan because they could then claim the matter was in litigation and all communications had to go through the attorneys. Even so informal dispute resolution is supposed to be a "business to business" process and not completely lawyer-driven.

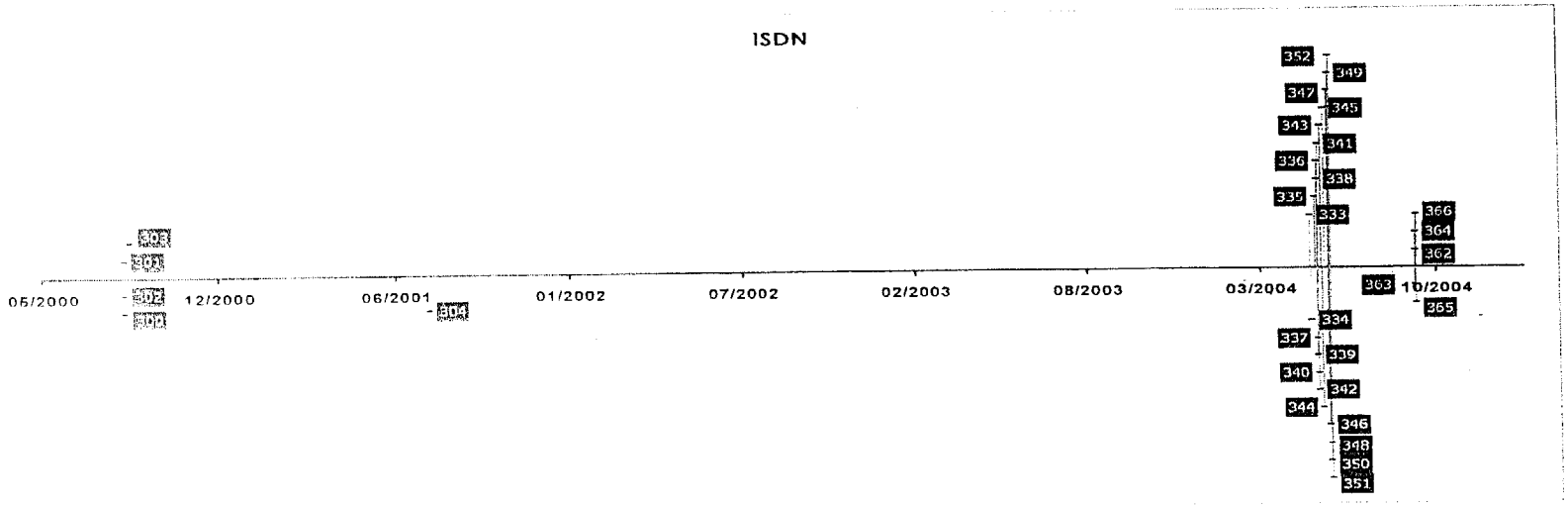
In e-mails leading up to the only informal dispute resolution meeting, SBC stated it had "Overriding Technical Concerns" related to UTEX's ISDN Interconnection orders. In the only face to face meeting, the attorneys for SBC instructed their client representatives not to speak to UTEX. UTEX still has no idea what these purported "Overriding Technical Concerns" are. When informal dispute resolution did not resolve the matter we filed the complaint in Docket 32041. Which went nowhere because the Commission would not process the case.

Q: DID YOU DEVISE AN ALTERNATIVE TO PROPOSE TO AT&T?

A: Yes. As indicated earlier, this was when I decided to try to directly interconnect with AT&T using SS7 B-links. I offered to do so in lieu of ISDN interconnection. That too went nowhere. During this time, AT&T began sending us TGSR augment request that said they wanted to establish direct end office trunking. We informed AT&T that they had a choice. We could bring up DEOTs using ISDN interconnection, or we could directly connect via SS7 B-links and establish signaling that would do call control for DEOTs. They chose to do neither and therefore we have no DEOTs.

Q: CAN'T YOU JUST ESTABLISH DEOTs USING YOUR THIRD PARTY PROVIDER?

A: No. At present it is not technically possible for our network to signal to AT&T end offices. If we are going to do DEOTs it must occur through either ISDN or direct interconnection with AT&T STPs via B-Links.


ISDN
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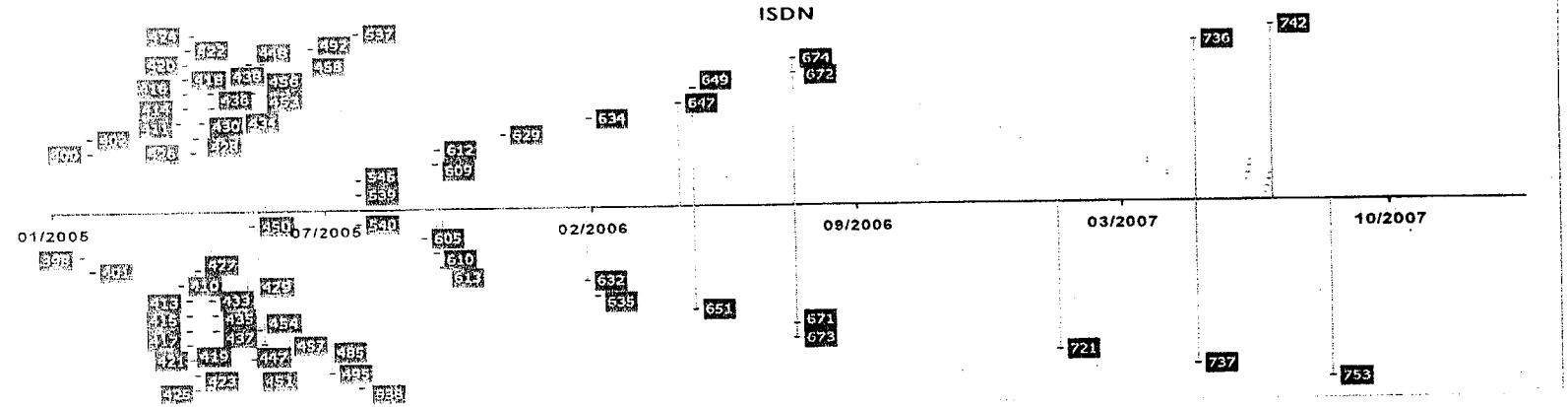
ISDN
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03/2007
10/2007

Section 5 Breach and Remedy:

11	Which, if any, of the actions addressed in Combined DPL Items Nos. 12-27, if committed by AT&T, would constitute a Specified Performance Breach under Attachment 17 of the ICA? Does Attachment 17 provide a remedy for any breach of the ICA the Commission finds AT&T has committed in this case? Has AT&T actually committed any of the actions addressed in Combined DPL Items Nos. 12-27?
12	Refusal to accept and process ISDN interconnection orders.
13	Refusal to directly interconnect via SS7 B-links.
14	Refusal to allow UTEX to order UNEs in Midland and Lubbock and use them for interconnection.
15	Requiring of UTEX to obtain unnecessary numbering resources before accepting an interconnection order.
16	Requiring of UTEX to obtain unnecessary SS7 point codes before accepting an interconnection order.
17	Refusal to accept an interconnection order until consenting to the content of a network diagram that imposed obligations not set out in the ICA.
18	Turning down interconnection facilities and trunks pending 911 testing.
19	Failure to establish, provide or follow the applicable ordering procedures pertaining to establishing SS7 B-links to be used in association with interconnection under § 251(c)(2).
20	Failure to provide or follow the applicable pre-ordering and ordering procedures pertaining to ISDN interconnection?
21	Refusal to negotiate in good faith concerning AT&T's asserted technical concerns relating to UTEX's ISDN interconnection orders?
22	Refusal to provide dark fiber pre-ordering information in response to requests submitted by UTEX after the Award in Docket 29944?
23	Failure to advise UTEX of AT&T's contention or belief it was not receiving CPN so the parties could "cooperatively work to correctly rate the traffic?"
24	Failure to "cooperatively work" with UTEX "to correctly rate the traffic?"
25	Failure to provide measurements and reports relating to performance standards

	under Attachment 17?
26	Use of the T2A standards and measurements instead of the standards and measurements prescribed in the UTEX/AT&T ICA?
27	Failure to self-report and directly provide credits or performance payments as a result of any breach identified in this case?
28	Has AT&T breached GTC §§ 9.3.1 and 36.1 by failing to act in good faith?

Q: PLEASE SUMMARIZE THE ISSUES IN THIS GROUP OF DPL ITEMS.

A: UTEX contends AT&T has breached the ICA in a host of ways. We assert they did so intentionally, knowingly and purposefully. UTEX asserts that AT&T has acted in bad faith and with the conscious purpose of frustrating UTEX's entry into the market using its unique interconnection terms and conditions. AT&T has done everything it could possibly do to make our ICA ineffective and useless. They have gone out of their way to contrive specious and stretched arguments that specific provisions do not mean what they say. Indeed, AT&T turns many of the provisions on their head so they end up meaning the exact opposite of the plain meaning of the contract. Then, AT&T either refuses to perform or it acts unilaterally to enforce its own interpretation, such as by sending massive bills. None of this is good faith or excusable neglect or negligence. It was purposeful. And it has worked since we have been tied up now for ***six years*** in constant disputes and litigation. They will not interconnect. They will not provide fiber pre-order information. They absolutely refuse to honor the original arbitrated terms or the Award in Docket 29944.

In addition, when they send bills, the bills themselves are impenetrable and impossible to audit: the bills cannot be verified by underlying data – either by UTEX's switch recordings or AT&T' own data.

There are liquidated damages provisions in the ICA. Some of them directly apply to AT&T' breaches and some are sufficiently analogous that they could (and should) be found to apply. Other breaches admittedly do not have a remedy in Attachment 17. UTEX's request is that the Commission first find that a breach has occurred. Then it should look to see if there is any remedy under Attachment 17 and provide that remedy. For those that are held to not have an Attachment 17 remedy, then UTEX requests a finding that AT&T' breach was "willful," "intentional misconduct" or "gross negligence" as those terms are used in GTC § 7.1.1 so that UTEX can then seek and obtain damages in a court of law. AT&T believes it can act in bad faith and breach this ICA with impunity, and it is hoping this Commission will protect it from its own actions by either finding there was no breach or by finding there is no remedy for the breach. This cannot be allowed. AT&T has the incentive and ability to frustrate competitive success by insurgent CLECs. It has the power to make it impossible to provide service by refusing to abide by contract terms. If AT&T believes it will not be required to recompense the CLEC it will have the perverse incentive to sit on its hands and do nothing in a passive-aggressive manner while the CLEC withers away. Or, it will be fully aggressive and bill the CLEC into oblivion or tie it up in litigation forever. AT&T has taken both courses here. UTEX was harmed. We need both prospective and historical relief.

UTEX is not seeking an order by the Commission that quantifies the damages that are owned. The PUC is not a court, and does not have the power to award damages. All UTEX seeks is a finding of breach, a decision whether Attachment 17 provides a remedy for the breach and where it does not find a remedy we want a finding of willful, intentional misconduct or gross negligence because AT&T acted in bad faith in many different, but related, ways.

Q: WHAT ATTACHMENT 17 PROVISIONS DO YOU BELIEVE ARE APPLICABLE?

A: Attachment 17 §§ 1.1.4.2, 1.1.4.3, 1.1.4.4.8, 1.1.4.4.33, 2.1 – 3.1, 4.1, 6.2, 6.3, 6.4, 9.4.1 - 9.4.10, and 9.6.2. I will go through them as I address each individual breach we have identified.

12	Refusal to accept and process ISDN interconnection orders.
20	Failure to provide or follow the applicable pre-ordering and ordering procedures pertaining to ISDN interconnection?
21	Refusal to negotiate in good faith concerning AT&T's asserted technical concerns relating to UTEX's ISDN interconnection orders?

Q: DID AT&T REFUSE TO ACCEPT AND PROCESS UTEX'S ISDN INTERCONNECTION ORDERS?

A: Yes. We submitted orders for ISDN interconnection both before the order in 29944 and multiple times after. First in Aril of 2005. We developed and sent in a form with as much information as we could think of about how our ISDN interconnection could work. We asked orally, we asked in writing via e-mail, we sent in our version of a "Service Order" when AT&T refused to provide them, and we consistently have forecasted our desire to immediately deploy ISDN Interconnection throughout the whole state and beyond our current footprint of seven LATAs. We offered to ease congestion through using ISDN PRI's as DEOTs. We even ordered a circuit to an AT&T Galveston switch, and hooked up our side. AT&T did not process an order. It has still not processed them. AT&T would not even talk to us about ISDN. They just don't like the fact UTEX has this right and is aimed to get rid of it.

We are not interconnected via ISDN due solely to the bad faith actions of AT&T.

UTEX addresses ISDN Interconnection elsewhere. My testimony in this part deals only with the issue of whether there is a remedy in Attachment 17.

Q: DOES ATTACHMENT 17 HAVE A PROVISION SETTING OUT LIQUIDATED DAMAGES FOR WHEN AT&T REFUSES TO ACCEPT AND PROCESS INTERCONNECTION ORDERS?

A: The Arbitrators held in Docket 29944 that the measurement UTEX asserted was applicable did not apply. See Docket 29944 Award, pp. 28 and 46. Attachment 17 § 1.1.4.4.8 apparently applies only to UNEs. We disagreed with that interpretation, but did not appeal. The Award in Docket 29944 did hold that AT&T was contractually required to implement interconnection orders within 20 days of receipt of an order. The Arbitrators on page 46 held that the provisioning interval was 20 days: "*The Arbitrators find that the related provisioning interval for ISDN Interconnection is as stated by SBC Texas, which is 20 business days from establishment of all required facilities and upon UTEX submitting a completed correct order to SBC Texas.*"[29]

Q: BUT HAVE "ALL REQUIRED FACILITIES" BEEN ESTABLISHED?

A: We established a the facilities in Galveston and hooked up our side. In every other market, we stand ready on our side to implement. Further, no special technical work need be done by AT&T. They simply do for us what they do for any other "Network to User" ISDN interface. . But this question points out one of the problems with Attachment 17. It wrongly assumed that AT&T would *cooperate* in the up-front work that is necessary to get interconnection working, and focused only on whether they just took too long. In our case AT&T

[29] I now question whether the Final Order in Docket 29944 is valid because it may have been procured by fraudulent misrepresentation by AT&T. AT&T has recently produced discovery in this case, items they did not produce in Docket 29944 showing AT&T fully understood how and was ready to implement ISDN Interconnection in 2000 and 2001. The big issue then was the potential CAP EX they might have to expend to do so. But in Dockett 29944, AT&T said it just couldn't understand how any of this "worked."

adamantly refuses to take even the first step. They will not talk to us about ISDN. We never get past the first step because AT&T has just flat-out refused to do ISDN interconnection. I will give you another example. Here is what the Arbitrators said at the top of page 29:

> *Therefore, the 20 business day time frame is appropriate. While UTEX does not oppose this timeframe, UTEX is concerned with SBC Texas' rejecting UTEX's ASRs arbitrarily.*[note omitted] *UTEX believes that in the absence of appropriate performance measures and penalties, SBC Texas does not have the incentive to timely provision interconnection trunks.*[note omitted] *However, at this point in time there is no evidence in the record to warrant a special process for UTEX, simply because UTEX believes that SBC Texas may reject UTEX's request by design. Therefore, the Arbitrators conclude that the ICA does not require SBC Texas to turn up traditional "SS7" interconnection trunks within five (5) days of an ASR. On the issue of order forms, the Arbitrators find merit in using standardized forms for ordering interconnection trunks. Standardized forms are necessary to ensure that information provided by CLECs is not inadvertently omitted and to provision the facility in a timely manner. Therefore, the Arbitrators do not modify that requirement.*

UTEX and SBC were arguing over information that SBC was requiring on its orders for interconnection trunks. The Arbitrators allowed SBC to craft forms that would be used for interconnection orders. They said UTEX had not shown a special process was needed.

The Docket 29944 Award was March 24, 2005, two years and four months ago. ISDN Interconnection was ordered in 1998. AT&T has admitted to us that there are no forms for either ISDN or B-links with respect to Interconnection under the Act. How many years and months does it take before this Commission sees a problem?

UTEX asked and asked and asked and got no answer. UTEX then created forms it thought would suffice, filled them out and submitted them to AT&T as orders for ISDN interconnection. AT&T did not process them.

Q: HAS AT&T EVER COMMUNICATED ANY BASIS FOR ITS REFUSAL TO INTERCONNECT VIA ISDN AFTER DOCKET 29944.

A: UTEX tried to work with AT&T after the Award in that Docket. We actually believed that AT&T would finally honor its obligations when it did not appeal the Award to federal court. Our hopes were misplaced. AT&T decided just not to do it. They have said several times that they have "technical concerns" but they have never expressed any specific technical issues. When we had our single meeting AT&T lawyers instructed the engineers to not talk to UTEX. All communications came only from the lawyer. All that the lawyer said was "you have not proven that you comply with the Award." I cannot imagine what more they might legitimately need to know. I showed them that we complied. I told them how. Essentially the same information is being presented in other parts of our direct case. I invited specific questions. They had none.

UTEX believes there should be some Attachment 17 measurement or liquidated damages relief for AT&T' purposeful, malicious, willful and intentional failure and refusal to lift a finger to implement ISDN interconnection as a result of §§ 1.1.4.2, 1.1.4.3, 1.1.4.4.8, 2.1-3.1, 4.1 and 6.4. But if the Arbitrators hold there is none, then recompense for the massive damages AT&T has imposed on UTEX must occur through regular contract damages approaches, in a court of law.

13	Refusal to directly interconnect via SS7 B-links.

Q: DID AT&T REFUSE TO DIRECTLY INTERCONNECT VIA SS7 B-LINKS?

A: Yes it did refuse. SS7 interconnection is addressed substantively in other testimony. My testimony in this part deals only with the issue of whether there is a remedy in Attachment 17.

Q: IS THERE A REMEDY IN ATTACHMENT 17?

A: UTEX believes there should be some Attachment 17 measurement or liquidated damages relief for AT&T' for AT&T' purposeful, malicious, willful and intentional failure and refusal to

interconnect via SS7 B-Links as a result of §§ 1.1.4.2, 1.1.4.3, 1.1.4.4.8, 2.1-3.1, 4.1 and 6.4. But if the Arbitrators hold there is none, recompense for the massive damages AT&T has imposed on UTEX must occur through regular contract damages approaches, in a court of law.

14	Refusal to allow UTEX to order UNEs in Midland and Lubbock and use them for interconnection.

Q: DID AT&T PREVENT UTEX FROM USING UNEs IT HAD OBTAINED UNDER § 251(c)(3) FOR § 251(c)(2) INTERCONNECTION?

A: Yes. In Midland UTEX ordered UNE facility and wanted to use it in part to provide service to customers and in part to carry interconnection-related traffic. AT&T said we could not use a UNE for interconnection. Specifically, in an email delivered in September of 2005, Mr. Bradley Britt of SBC Interconnection advised former UTEX employee Brett Nemeroff that an interconnection order had been rejected because it used a UNE T3 for interconnection:

>>Brett:
>>Your Loa/Cfa indicates apot of 02262070103. This asr/order, your pon
>>UEOLBCKLOC is being rejected since you can not use the UNE T3 *(U134
>>/T3Z /01 /LBCKTXPSHA1/LBCKTXPSK11)* for Local Interconnection.

Q: DOES THE ICA ALLOW UTEX TO USE UNEs FOR INTERCONNECTION?

A: Yes. The issue was arbitrated in the WCC case. Section 2.3 of Attachment 6 – UNE provides:

> 2.3 CLEC may use one or more Network Elements to provide any technically feasible feature, function, or capability that such Network Element(s) may provide.

This is not a matter of technical feasibility; even AT&T does not assert there is a technical issue. It relates to permitted use. The interconnection provisions in the ICA make it even clearer. One of the provisions that AT&T uses to justify its imposition of access charges